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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

NAXOS ART INC.,

PLAINTIFF,

- against -

NICHOLAS S. ZOULLAS,

DEFENDANT(S).

---X

NOTICE OF REMOVAL

Removed from:

Supreme Court of the State of New York,
New York County

Index #: 653223/2016

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PLEASE TAKE NOTICE that the Law Office of Thomas A. Farinella, PC and R.S. DALLEY, PLLC, on behalf of their client, Nicholas S. Zoullas ("Zoullas"), hereby give notice that the above-captioned action, filed with the Supreme Court of the State of New York, Country of New York, and all claims and causes of action therein (the "State Action"), is hereby removed to the United States District Court for the Southern District of New York. As grounds for removal, Defendant states as follows:

GROUNDS FOR REMOVAL

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 on the basis of diversity jurisdiction, and removal is proper pursuant to 28 U.S.C §§ 1441 and 1446.

2. Venue is proper because this Court constitutes the "district court of the United States for the district and division embracing the place where [the State Action] is pending." 28 U.S.C. § 1441(a).

I. Procedural History and Timeliness of Removal in the State Action

3. On June 17, 2016, Naxos Art Inc. ("Naxos"), filed an action seeking injunctive relief with a temporary restraining order ("TRO"), specific performance of a custodian agreement, a declaratory judgment while asserting a breach of contract claim and claims for replevin, conversion and breach of fiduciary duty seeking specific performance of a custodian agreement claim arising out of an actual controversy between Zoullas and Plaintiff Naxos Art Inc. ("Naxos") concerning the parties rights and obligations under a custodian agreement ("Agreement") regarding art work ("art") that Plaintiff wanted returned. On the same day Plaintiff filed an Order to Show Cause ("OSC #1") as to why a Temporary Restraining Order should not be entered against Defendant. A copy of the Summons and Complaint is annexed hereto as **Exhibit A.** A copy of the OSC is attached hereto as **Exhibit B**.

4. On June 23, 2016 the Supreme Court scheduled a hearing on Plaintiffs' TRO for June 23, 2016. A "So Ordered" stipulation was entered on June 28, 2016 and is attached hereto as **Exhibit C.**

5. At the same hearing, Defendant, was served with the Complaint. The Complaint sought

an Injunction and alternative relief "in an amount to be determined at trial." At this point the Complaint was ambiguous as to the claim for damages and the amount in controversy; as it was pleaded could not have satisfied diversity.

6. On July 13, 2016, Defendant filed a Verified answer to the Complaint. A copy of the Verified Answer is annexed hereto as **Exhibit E.**

7. The June 23, 2016 hearing was adjourned until July 21, 2016 wherein a hearing date was set down for October 15, 2016. At the July 21, 2016 appearance, the parties entered into a second "So Ordered" stipulation on the record. A copy of the "So Ordered" stipulation is annexed hereto as **Exhibit K**.

8. Plaintiff made an ambiguous request for damages in the Complaint, and despite Plaintiff's belief, it sought an amount to be determined at trial thus the Complaint did not satisfy an amount in excess of $75,000.

9. On August 24, 2016, Plaintiff filed a motion for contempt as to Defendant, alleging that he failed to comply with the "So Ordered" stipulations because all of the alleged art was not turned over. Defendant filed opposition on September 9, 2016.

10. The Plaintiff requested that the Defendant be fined "$10,000.00 per day, plus actual damages, and damages incurred by Plaintiff in seeking to cause Zoullas to comply with the Court Orders." This is an unambiguous statement regarding a specific amount in controversy which is in excess of $75,000.00. The contempt hearing was scheduled for September 15, 2015, in which it was adjourned until September 22, 2016. A copy of the Plaintiff's motion for contempt is annexed hereto as **Exhibit L**. A copy of the Defendant's opposition to Plaintiff's motion for contempt is annexed hereto as **Exhibit N**.

11. On September 9, 2016, Plaintiff filed an Order to Show Cause seeking subpoenas to non-

parties. A copy of the Order to Show Cause is annexed hereto as **Exhibit O**.

II. Removal is Proper Under 28 U.S.C. § §1332 and 1446

12. According to 28 U.S.C. § 1446(b)(3), "if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."

13. Removal is justified because this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity among the parties.

A. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332

14. 28 U.S.C. § 1332(a) provides that this Court has original jurisdiction over any matter where "the matter in controversy exceeds the sum or value of $75,000" and the matter is between "citizens of different States and in which citizens or subjects of a foreign state are additional parties."

15. Complete diversity began when the Plaintiff filed his motion for contempt and exists at the time of the filing of this removal petition.

16. Plaintiff, Naxos Art Inc., is the owner of a company that is incorporated in the Isle of Man with Headquarters in the State of Minnesota.

17. Defendant, Nicholas S. Zoullas, is a citizen of the state of New York.

18. There is diversity of citizenship among the parties as required by 28 U.S.C. §§ 1332. The amount in controversy exceeds $75,000 as the Plaintiffs' request to fine Zoullas $10,000 per day and for damages in his motion for contempt if it were granted will amount to $170,000.00 at the time of this filing.

III. Timeliness of Petition for Removal

19. The Petition for Removal is timely pursuant to 28 U.S.C. §§ 1446 (b)(3) and (c)(1), as this removal petition has been filed less than 30 days after Defendant could ascertain that federal jurisdiction exists which was triggered by the damages plaintiff requested in their contempt motion and this removal petition has been filed less than 1 year after commencement of the action; therefore, the time to file for removal has not elapsed.

IV. Relief Requested

Defendant requests that this matter be removed to the United States District Court for the Southern District of New York for all further dispositions, that this case be consolidated with Nicholas S. Zoullas v. Stacy Cliett et al. Docket Number: 16-cv-7164 and that this Court issue such further orders and processes as may be necessary to bring before it all parties for ultimate resolution of this matter.

V. Compliance with All Requirements for Removal

Defendant has complied with all requirements for removal under Title 28 of the United States Code. A true and accurate copy of this Petition for Removal is being filed with the Clerk of the Supreme Court of New York, County of New York, and to all adverse parties, in accordance with 28 U.S.C. § 1446(c).

WHEREFORE, Defendant, respectfully request that the instant action be removed from New York Supreme Court, County of New York to the United States District Court for the Southern District of New York.

Dated: September 17, 2016
New York, New York

Respectfully submitted,

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